



National
Congress of
American
Indians

WHITE HOUSE NATIVE AMERICAN BUSINESS LEADERS ROUNDTABLE

BRIEFING MATERIALS

AUGUST 4, 2011

TABLE OF CONTENTS

CONTEXT FOR THIS ROUNDTABLE	3
FULL LIST OF RECOMMENDATIONS	6
OVERARCHING RECOMMENDATIONS	14
ACCESS TO CAPITAL	18
SKILLS AND JOB TRAINING	33
ACCESS TO BROADBAND	40

This document is a collaborative effort of leaders from throughout Indian Country whom the White House invited to the Native American Business Leaders Roundtable. While the development of this document was led by the staff of the National Congress of American Indians (NCAI) the recommendations do not necessarily reflect the official position of NCAI or our members.

CONTEXT FOR THIS ROUNDTABLE

As the American economy continues its slow recovery, it is increasingly evident that *Urban communities – while a growing proportion of America’s population by some measures – cannot thrive, nor can the nation, if tribal nations (and other rural communities) are not successful. In short, sustainable prosperity in America is intimately linked to a robust rural-urban partnership that fully utilizes the innovation of Native nations.*¹

This reality is at the heart of the issues that will be addressed in this roundtable. The Administration faces a unique opportunity to remove barriers to the success of tribal economies. These efforts will ultimately benefit tribal communities and stimulate economic growth that builds a stronger America.

As the “cloud of uncertainty” lifts over Washington this week, it is fitting that the White House Native American Business Leaders Roundtable Discussion takes place immediately after the new debt ceiling law goes into effect. The possible outcomes from increased cuts and revenue demands may significantly impact tribal economies – both those that are struggling during the current downturn and those that are thriving.

We agree with President Obama that “We can’t balance the budget on the backs of the very people who have borne the biggest brunt of this recession.”² The profile of Native people on issues related to this roundtable demonstrate our communities have borne the brunt of this recession (and previous recessions):

Business Development

- 2007 data from the Census Bureau identified 236,967 businesses owned by individual American Indian- and Alaska Native people. While this figure was an increase of 17.7 percent from 2002 (on par with national growth). These data excluded tribally-owned businesses and represented a significantly decreased rate from that seen in the 1990s.
- Individually-owned American Indian and Alaska Native businesses generated \$34.4 billion in receipts in 2007, a 28 percent increase from 2002.³

Access to Capital

- Native people are among America’s most underbanked populations with a full 44.5 percent of American Indian and Alaska Native households underbanked, and 15.6 percent completely unbanked.⁴

¹National Congress of American Indians, (June 2011) “Innovative Native Nations in Rural America: Key Partners in Building Sustainable American Prosperity”

² President Barack Obama, (August 2, 2011), “Statement on the Debt Compromise.” Accessed at: <http://www.whitehouse.gov/blog/2011/08/02/putting-americans-back-work-president-obama-speaks-debt-compromise>

³ US Census Bureau, (March 15, 2011), “Census Bureau Reports American Indian- and Alaska Native-Owned Businesses Generated \$34 Billion in Receipts in 2007.” Retrieved at: http://www.census.gov/newsroom/releases/archives/business_ownership/cb11-47.html

- Eighty six percent of Native communities lack access to a single financial institution (with a broad definition that included a simple ATM).⁵
- Fifteen percent of Native community members need to travel over 100 miles to access a financial institution.⁶
- The Department of the Treasury estimated a \$44 billion unmet capital need in Indian Country in 2001.⁷

Workforce Development

- Native communities have faced Depression level unemployment for generations. In 2000, when the national unemployment rate was less than 3.5 percent, the on-reservation unemployment rate was 22 percent.⁸
- The Economic Policy Institute reports that the Native unemployment rate has risen at a rate 1.6 times the size of the white increase during the recession (to 15.2 percent for all Native people).⁹

Broadband

- Basic telecommunications infrastructure is unavailable to approximately one-third of Native people. Nationally, telephone access is available to 98 percent of the population but only 67.9 percent of tribal lands, with many tribes where over half of citizens lack access to telephone services.¹⁰
- Broadband penetration rates are even more divergent. While 95 percent of Americans live in housing units with access to fixed broadband infrastructure, broadband is available to less than 10 percent of Indian Country.

Leaders in Indian Country sincerely hope that – even as the debt ceiling law seeks to find both spending cuts and revenue increases in the coming months – the federal government will stay true to the federal trust responsibility. We encourage the Administration, and the Joint Committee on Deficit Reduction, to honor the trust relationship as they consider spending cuts and revenue increases to address the debt and deficit. Maintaining investment in tribal innovation is essential to ensuring tribes can fully contribute to America’s economic recovery. Balancing the budget will not sustain America’s economy if it leads to spending cuts that create further unemployment on reservations and increase demand on already strained programs in communities that already have the highest rate of unemployment in the nation.

⁴ FDIC National Survey of Unbanked and Underbanked Households (Dec. 2009)

<http://www.fdic.gov/householdsurvey/> p10.

⁵ Department of the Treasury, (2001) *Native American Lending Study*,

http://www.cdfifund.gov/docs/2001_nacta_lending_study.pdf

⁶ Treasury 2001

⁷ Treasury 2001

⁸ U.S. Census Bureau, Census 2000 Summary File 4

⁹ Algernon Austin, (2010), “Different Race, Different Recession: American Indian Unemployment in 2010.”

Retrieved at: <http://www.epi.org/page/-/pdf/ib289.pdf?nocdn=1>

¹⁰ 2006 GAO 06-189 Report , *Challenges to Assessing and Improving Telecommunications For Native Americans on Tribal Lands*

As Congressional leaders consider tax reform, we encourage the Administration and Congress to ensure any tax reform deal ensures tribes have access to financing options available to other governments and preserves existing incentives that support the programs and services that are needed in tribal communities more than almost any other sector in America.

Native people are America's most rural population and represent more than 5 million Americans, 1.7 percent of the population.¹¹ Tribal lands cover over 100 million acres, or more than 5 percent of the nation's land base, an area comprising more than 100 million acres. Taken together, this area would make Indian Country America's fourth largest state behind only Alaska, Texas, and California. This sizable land base and the unique status of tribes as members of the "American family of governments," acknowledged in the Commerce Clause of the Constitution, Indian Country is a key incubator for policy innovation to build a strong American economy.

In spite of the opportunity presented by tribal nations, Native people face significant barriers to economic success. As outlined below in the energy case study (page 32), action to remove regulatory barriers could unleash significant economic potential in Indian Country and make an important contribution to the development of America's renewable energy future.

We welcome the opportunity to engage with key Administration officials on these important issues to the future of Indian Country and our nation.

¹¹ 2010 Census [P.L. 94-171] Summary File Data and Population Distribution Chart. Retrieved from: http://www.census.gov/rdo/data/2010_census_redistricting_data_pl_94-171_summary_files.html

FULL LIST OF RECOMMENDATIONS

OVERARCHING RECOMMENDATIONS

I. HONOR TRIBES AS GOVERNMENTS IN ALL POLICY AREAS

- a) Affirm tribal sovereignty and use executive powers to provide equal access to funding, adjust restrictive policies and regulations, and ensure tribes are involved in the rulemaking process
- b) Encourage Congress to include tribes in the definition of “state” in all relevant legislation
- c) Develop clear tax and regulatory policy in consultation with tribal governments

II. PROMOTE PUBLIC-PRIVATE PARTNERSHIPS TO GROW THE INDIAN COUNTRY ECONOMY

- a) Convene a meeting with financial institutions, Native CDFIs, and tribal leaders to develop partnerships
- b) Convene a meeting with tribal enterprises and surety bonding companies
- c) Convene a meeting with large foundations to encourage co-investment in Indian Country

III. IDENTIFY ALL FEDERAL ECONOMIC DEVELOPMENT PROGRAMS AVAILABLE TO TRIBES AND COMMUNICATE TO INDIAN COUNTRY

- a) Develop a list of all economic development programs that can be utilized by tribes and Native non-profits
- b) Utilize low-cost means to communicate opportunities to Indian Country

IV. STREAMLINE FEDERAL TRUST DECISIONS TO PRIORITIZE ECONOMIC DEVELOPMENT

- a) Encourage the Secretary of the Interior to exercise his authority in a way that prioritizes and advances tribal economic development (e.g. giving priority to business development leases etc.)

V. IMPROVE DATA COLLECTION METHODS AND ENSURE THAT ACCURATE DATA ARE MADE AVAILABLE TO POLICYMAKERS

- a) Direct the Census Bureau to test the effectiveness of higher volume, less regular ACS data collection (e.g. on a biannual basis, rather than monthly) with an eye to improving data quality (particularly to narrowing error boundaries on key socioeconomic data estimates)
- b) Identify existing federal studies and research dollars that could be applied to improving data quality in Indian Country

- c) Direct all federal agencies to review existing grant scoring criteria and offer tribes alternate assessment criteria to account for the diverse quality of data describing Native communities
- d) Ensure that tribal grant applications are reviewed by individuals with Indian Country knowledge and expertise
- e) Consult with tribes to ensure that performance measures reflect indicators that are relevant, collectable, and important to the community itself

VI. WAIVE MATCH REQUIREMENTS TO ACKNOWLEDGE THE UNIQUE CHALLENGES FACED BY NATIVE COMMUNITIES

- a) Eliminate match requirements for grants to tribal governments

ACCESS TO CAPITAL

VII. NEW MARKETS TAX CREDIT

- a) Issue clarification that Section 17 Corporations, Alaska Native Corporation, and other wholly owned tribal entities, are QALICBs
- b) Support education and outreach to ensure tribes have adequate information on how to use New Markets Tax Credits
- c) Provide support to identify Community Development Entities willing to work with tribal governments
- d) Provide a structure that would allow 3-5 small projects, \$10 million and under to jointly access NMTCs
- e) Include Native trust lands and Alaskan communities under 50,000 in population as eligible investment areas for New Markets Tax Credits

VIII. SECTION 1603 GRANTS

- a) Allow tribal Section 17 Corporations, as well as other wholly owned tribal entities, to participate in the Section 1603 grant program

IX. TRIBAL TAX-EXEMPT BONDS

- a) Eliminate the 'Essential Government Function' analysis currently used to qualify tribal projects for tax-exempt financing
- b) Deem projects undertaken by Section 17 Corporations and other wholly owned tribal entities as qualifying projects for the purpose of tax-exempt financing
- c) Institute federal guarantees to back tribal bonds on the market
- d) Exempt tribal governments from the registration and disclosure rules within the Security Act of 1933

TRIBAL ECONOMIC DEVELOPMENT BONDS

- a) Expedite the completion of the Tribal Economic Development Bond study under the Recovery Act
- b) Expand the timeframe for current projects to issue a bond offering
- c) Adjust the general time requirements for bond offering under the TED bond program
- d) Reallocate unused funding for another bond offering and adjust cap limits to encompass larger-scale development projects
- e) Expand eligibility to include ANCSA corporations and issue clarification that Alaskan tribes and Alaska Native Corporations qualify to issue Tribal Economic Development Bonds

TAX-EXEMPT PRIVATE ACTIVITY BONDS

- a) Expand tribal tax-exempt private activity bond authority to include commercial projects with economic, environmental, or other social value

X. SURETY BONDING

- a) Support the expansion of the Bureau of Indian Affairs' guaranteed loan program to ensure access to surety bonding for eligible Indian-owned construction companies
- b) Provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction
- c) Organize and coordinate a meeting between surety bonding companies and tribal economic development enterprises
- d) Explore options that benefit contractors (rather than sureties), such as loan guarantees for operating capital

XI. TAX EXTENDERS

- a) Support the permanent authorization of the Accelerated Depreciation & Indian Employment Tax Credits
- b) Allow Section 17 Corporations and other wholly owned tribal entities to make use of federal tax extenders through the establishment of tax credits which may be sold by the tribal entity on the secondary market

XII. LEASES, RESOURCE SALES & LAND INTO TRUST APPLICATIONS

- a) Prioritize the timely completion of procedures affecting economic development in Indian country by the Department of the Interior
- b) Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers
- c) Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way

XIII. BARRIERS TO ENERGY DEVELOPMENT

- a) Expedite agency decision-making processes which have a direct effect on tribal economic development opportunities, such as the approval of development projects, leases, timber sales, agricultural leases, leases for right of way (*e.g.*, to develop telecommunications infrastructure), and land into trust applications
- b) Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers
- c) Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way
- d) Eliminate the BLM's discriminatory permit application fee to drill on tribal trust land
- e) Amend or clarify regulations to enhance access to energy development opportunities

XIV. CDFI FUND – NATIVE INITIATIVES

- a) Support inclusion of the Native initiatives in the authorizing statute for the CDFI Fund
- b) Promote agency outreach to Native CDFIs to connect them to potential funding opportunities
- c) Engage tribal leaders, Native CDFIs and other stakeholders to explore changes to allow tribes to own a CDFI
- d) Allow federal funds to be used as qualified match for awards to Native CDFIs
- e) Direct the Native Initiatives of the CDFI Fund to gather best practices and share with Native CDFIs and tribal governments
- f) Conduct outreach to financial institutions to educate them about the potential of investments in Native CDFIs
- g) Encourage meetings between Native CDFIs and their elected officials to discuss successes of NCDFI programs

XV. COMMUNITY REINVESTMENT ACT

- a) Direct the Consumer Financial Protection Bureau to specifically analyze new data available under Dodd-Frank to assess small business lending in Indian Country
- b) Clarify that investments in alternative energy facilities and energy efficiency enhancements are eligible for CRA credits
- c) Add a specific community development test for large banks, and remove exemptions for small and intermediate small banks
- d) Impose meaningful consequences for non-compliance with CRA requirements
- e) Ensure bank Performance Evaluations include analysis of services provided to Native communities

XVI. SMALL BUSINESS ADMINISTRATION

- a) Support the tribal small business 8(a) program
- b) Expand the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries to apply to all industries

- c) Elevate the Assistant Administrator of Native American Affairs at the Small Business Administration to Associate Administrator, with grant authority and a budget
- d) Encourage individual tribal entrepreneurs to seek finance opportunities outside the scope of Indian/tribal funding
- e) Expand investments in Native entrepreneurship training, including using entrepreneurial development funds for Native business centers and collaborations with Small Business Development Centers
- f) Require procurement or preferences for goods and services that have been manufactured under supplier diversity mentor protégé or other agreements and have at least 51% diversity supplier content.
- g) Seek GSA building leases from qualified minority interests.

XVII. BUY INDIAN ACT

- a) Support and enhance the Buy Indian Act by establishing and enforcing regulations
- b) Explore ways to implement the Buy Indian Act for any federal program that receives funds for the benefit of Indians

XVIII. TRADE MISSIONS

- a) Conduct a meeting between senior Commerce officials, tribal leaders, and tribal enterprises to discuss potential tribal participation in U.S. trade missions

SKILLS AND JOB TRAINING

XIX. STREAMLINING FEDERAL EMPLOYMENT AND TRAINING PROGRAMS

- a) Fully support Public Law 102-477 to allow tribes to maximize the impact of federal job and skill development funding
- b) Rescind the March 2009 OMB A-133 Compliance Supplement
- c) Work with tribal leaders and the Native American Employment and Training Council to develop a program accountability system that meets the needs of Native communities

XX. TRIBAL COLLEGES

- a) Ensure tribal colleges are included in existing and proposed programs to develop America's workforce through community colleges
- b) Reissue the tribal college specific Executive Order (EO 13270), either separately or as a part of an overall Executive Order on Indian education, to require all agencies to work with tribal colleges and provide an implementation plan for such cooperation
- c) Advocate for increased funding for TCUs and assist TCUs to leverage other outside resources in the private sector
- d) Support TCUs in obtaining more research grants that can assist the tribal nations that they serve

- e) Include tribal colleges in efforts to develop jobs in America, looking to TCUs as training centers for workforce development in Indian Country and rural America
- f) Continue support for UTTC to develop as a regional training center for law enforcement correctional officers
- g) Restore UTTC as a University Center for Economic Development to utilize the job creation capacity of TCUs

XXI. EMERGING EMPLOYMENT OPPORTUNITIES

- a) Interpret the Green Jobs Title of the Energy Independence and Security Act to include tribal governments, businesses, and veterans associations so that they can access programs such as Pathways Out of Poverty
- b) Work in conjunction with tribal charter schools, BIE, and non-Indian schools with technology-specific curriculums to develop youth exchange programs

XXII. YOUTHBUILD

- a) Encourage appropriators to restore the rural and tribal set-aside, with a dedicated set-aside for tribal programs
- b) Work with DOL to utilize regulatory means to ensure access for tribal grantees
- c) Establish partnerships between federal agencies, community colleges, tribal colleges and universities, and technical/vocational colleges to increase access to higher education and foster the creation of bridge programs
- d) Relax Department of Education regulations to allow YouthBuild to compete for innovation funds

XXIII. CURRENT WORKFORCE DEVELOPMENT PROGRAMS AND SERVICES

- a) Inventory existing workforce development programs across agencies and conduct coordinated interagency outreach to promote funding opportunities
- b) Encourage agencies to conduct tribal specific outreach where tribes and Native non-profits are eligible to access funding

ACCESS TO BROADBAND

XXIV. RURAL DEVELOPMENT LOAN PROGRAM

- a) Reform USDA lending policies to ensure tribal eligibility for loans even when they provide competition to rural telecommunications companies/cooperatives
- b) Redefine service areas to accommodate tribal ETC designations if a rural carrier holds spectrum over tribal lands
- c) Identify and communicate programs that offer tribes competitive financing options (e.g. low interest rates and extended repayment terms or the waiver of non-duplication restrictions, matching fund requirements, or credit support requirements from any loan or grant administered by federal agencies)

- d) Create a tribal position, filled by an American Indian or Alaska Native, within the USDA RUS to encourage further collaborative efforts with tribes

XXV. UPGRADE E-911 ABILITIES

- a) Provide for SafetyNet E-911 service for tribal communities since many tribal lands reside in rural areas thereby increasing EMS and law enforcement response times
- b) Ensure that wireline telephone carriers have an updated ALI database that is inclusive of tribal lands
- c) Ensure that wireless mobile telephone carriers fully implement and continually update E-911 Phase 2 on tribal lands ensuring that this service is accurate within 300 meters when determining the location of a caller and subsequently routing them to an appropriate PSAP
- d) Provide and support amendments to be inclusive of tribal governments and lands in HR 2629 “Next Generation 9-1-1 Advancement Act of 2011”

XXVI. COMMUNICATIONS INFRASTRUCTURE

- a) Establish inter-agency collaboration between the Department of Treasury, Department of Agriculture, and the Department of the Interior with tribes to develop additional financing options collectively, and educate tribes of available financing
- b) Ensure funding mechanisms allow tribes access to technical assistance to assess infrastructure and appropriate technological and service solutions for deployment and maintenance of broadband services on tribal lands
- c) Ensure adequate access to tax exempt bond financing and that broadband deployment meets the ‘essential government function’
- d) Support a ‘tribal-centric’ build out model for communications infrastructure
- e) Use the E-Rate model for tribal communities to prioritize the need for communications networks and for managing costs and distribution logistics
- f) Continue waivers for the E-Rate model to provide access to the general public in tribal communities beyond the ‘school hours’ designation
- g) Urge the FCC to alter the definition of ‘library’ to allow eligibility for tribal libraries to receive E-Rate support

XXVII. UNIVERSAL SERVICE FUND (USF)

- a) Create a ‘Native Nations Broadband Fund’ within the USF to provide targeted funding for broadband deployment in Indian Country. This fund would combine Universal Service support and federal grant resourcing programs
- b) Support the creation of a separate tribal account within the Mobility Fund
- c) Create a ‘Tribal Seat’ on the Joint Federal-State USF Board to ensure a voice for Indian Country to receive these vital communications services
- d) Include broadband internet service access and mobility services in the list of services provided by the USF
- e) Allocate and reserve spectrum for tribal communities and make existing spectrum over tribal lands available for public interest needs

- f) Develop a comprehensive Native Spectrum Policy to enhance tribal access to spectrum for public needs and the ability to acquire and retain licenses to said spectrum
- g) Urge the FCC to designate ‘unserved areas’ and ‘unserved broadband areas’ as those areas that are 15% below the nationwide average of telecommunications service
- h) Increase support for tribal telecommunications corporations to attain ETC designation in order to provide service to tribal members
- i) Include provisions for tribal communities to receive funding from the CAF, while ensuring the continuation of vital analog services such as Lifeline, Link-Up, and the High Cost programs

XXVIII. SPECTRUM DASHBOARD DATA

- a) Advocate on behalf of tribes for an accurate assessment of broadband capabilities on tribal lands to be included in the Spectrum Dashboard data
- b) Grant tribes access to the Dashboard for planning purposes to develop their own telecommunications capabilities

XXIX. REVERSE AUCTIONS OF SPECTRUM

- a) Urge the FCC to change its stance on reverse auctions for tribal and rural communities and instead provide tribal priority to available spectrum and offer it at discounted or reserved prices
- b) Ensure adequate consultation is undertaken and tribes are compensated in the case that reverse auctions continue

XXX. TRIBAL LANDS BIDDING CREDIT (TLBC)

- a) Enforce the TLBC program and ensure that recipients of these credits build out service in tribal communities
- b) Intervene when providers have experienced obstacles presented by state or local governments
- c) Reacquire spectrum allocated to entities who fail to serve their designated tribal lands and give tribes first priority to obtain these licenses at reserve or discounted prices

XXXI. PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM (PTFP)

- a) Extend tribal radio construction permits nearing the expiration deadline
- b) Review and consider reauthorization of the Public Telecommunications Facilities Program to advance tribal and rural communities access to public radio and television

OVERARCHING RECOMMENDATIONS

Both economic development and job creation in Indian Country hinge on the unique governmental relationship between tribes and the federal government. This relationship was affirmed by President Obama's November 5, 2009 memo to federal agencies that directed all federal agencies to comply with Executive Order 13175 (E.O. 13175). The Executive Order provides the framework for a trust responsibility that spans across all federal agencies and not simply the Department of the Interior (DOI). The consultation policies that emerged from or were enhanced by E.O. 13175 serve an important purpose, but the federal government must progress beyond consultation to fully support economic development in Indian Country. Tribes need true government partnership with all federal agencies. This partnership will ensure that Native people—and the United States as a whole—fully benefit from the economic potential presented by our tribal nations.

I. HONOR TRIBES AS GOVERNMENTS IN ALL POLICY AREAS

Indian tribes are polities whose governments have all of the privileges and immunities routinely reserved to other governments in the U.S. federal structure. Nonetheless, tribal governments often are not given the same opportunities provided to state or local governments. For example, the large federal appropriations in the American Recovery and Reinvestment Act (Recovery Act) for energy programs provided \$12 billion to state governments and less than \$65 million to tribal governments even though tribal land mass (not to mention immense energy potential) justified more than \$600 million. This disproportional treatment denied tribes economic development opportunities and deprived the nation many benefits of the immense energy potential on tribal lands.

Rather than the appropriate treatment as governments, tribes are sometimes treated as corporations or businesses. Examples of this treatment include revenue rulings from the Internal Revenue Service (IRS) requiring 1099 reporting from tribes for education and cultural benefits provided to their members; the essential government function analysis used to determine if tribal programs qualify for tax-exempt financing; and, general taxing inequities which favor states' encroachment into the taxing jurisdiction of Indian tribes.

Indian Country was heartened by recent legislative efforts that affirmed tribal sovereignty and the status of tribes as governments. In the specific policy areas covered by this roundtable, the Dodd-Frank Act's definition of "state" to include tribal governments is a model that should be pursued in other federal legislation. Robust economic growth in Indian Country also depends on clear tax and regulatory policy that affirms tribal sovereignty. Examples of this are allowing tribes to fully enact and utilize tax and regulatory policy to encourage economic growth; allowing tribal corporations to establish S Corporations; or pre-empting state taxation on all activities, and/or transactions, occurring on leases within the contiguous borders of an Indian reservation and/or Indian country. The development of such a tax policy is critical to building strong, sustainable tribal economies.

Specific Recommendations

- a) Affirm tribal sovereignty and use executive powers to provide equal access to funding, adjust restrictive policies and regulations, and ensure tribes are involved in the rulemaking process
- b) Encourage Congress to include tribes in the definition of “state” in all relevant legislation
- c) Develop clear tax and regulatory policy in consultation with tribal governments

II. PROMOTE PUBLIC-PRIVATE PARTNERSHIPS TO GROW THE INDIAN COUNTRY ECONOMY

In a time of constrained federal resources, the Administration can significantly contribute to economic growth in Indian Country by using its significant convening power to draw the attention of private sector and philanthropic investors to the opportunities presented by tribal nations. Financial institution access could be enhanced by convening a strategy session with large financial institutions, small and medium banks, Native Community Development Financial Institutions (CDFIs), and tribal leaders to develop innovative partnerships. To address surety bonding utilization, the Administration could convene tribal enterprises with surety bonding companies. Using the Rural Council as a framework, the Administration could draw particular attention to the underinvestment by philanthropy in tribal nations and convene large foundations to seek commitments to co-invest in Indian Country. There are myriad other opportunities with respect to labor programs and broadband deployment as listed below.

Specific Recommendations

- a) Convene a meeting with financial institutions, Native CDFIs, and tribal leaders to develop partnerships
- b) Convene a meeting with tribal enterprises and surety bonding companies
- c) Convene a meeting with large foundations to encourage co-investment in Indian Country

III. IDENTIFY ALL FEDERAL ECONOMIC DEVELOPMENT PROGRAMS AVAILABLE TO TRIBES AND COMMUNICATE TO INDIAN COUNTRY

The network of federal investments that promote economic development is extremely complex. As the Administration demonstrated with the [Recovery.gov](https://www.recovery.gov/) clearinghouse, access to information is critically important for efficient and effective utilization of federal resources. The simplest starting point is to create a central list identifying financing options from various agencies and federal programs that tribes and tribal members can use for business development. As an example, the Department of Justice (DOJ) has instituted a Coordinated Tribal Assistance Solicitation (CTAS) listing, which is a central location for all tribe-specific funding from the various agencies within DOJ. A similar, cross-department approach in the economic development sector would help tribes and interested individuals access the Indian Country economic development opportunities available from the Department of Treasury, the Small Business Association, the Bureau of Indian Affairs, and other agencies.

Specific Recommendation

- a) Develop a list of all economic development programs that can be utilized by tribes and Native non-profits
- b) Utilize low-cost means to communicate opportunities to Indian Country

IV. STREAMLINE FEDERAL TRUST DECISIONS TO PRIORITIZE ECONOMIC DEVELOPMENT

The Department of the Interior (DOI) exercises substantial oversight in Indian affairs. Land into trust applications, land transfers, leases for business development, and the sale of natural resources all must be approved by the Secretary of the Interior. In the economic development sphere, this oversight process puts a drag on business development and acts as a disincentive to potential partnerships with outside entities. We recommend that the Secretary exercise his authority in a manner that advances tribal economic development. For instance, applications for the sale of resources or business development leases should be given priority treatment in the DOI's decision-making process. This approach will encourage development in Indian Country and reduce the uncertainties that can discourage outside entities from partnering with Indian tribes.

Specific Recommendation

- a) Encourage the Secretary of the Interior to exercise his authority in a way that prioritizes and advances tribal economic development (e.g. giving priority to business development leases etc.)

V. IMPROVE DATA COLLECTION METHODS AND ENSURE THAT ACCURATE DATA ARE MADE AVAILABLE TO POLICYMAKERS

While federal data collection itself does not stimulate business development, data are increasingly used to determine where and how scarce federal dollars are invested. Since 2000, no meaningful socioeconomic data about Indian Country as a whole has been produced by the U.S. government. The widely documented concerns of rural and remote communities about the Census Bureau's American Community Survey (ACS) are even more pronounced in Indian Country. The Bureau of Labor Statistics (BLS) essentially excludes data from Indian reservations in the monthly labor force reports, and there is a wide discrepancy between DOI labor force reports and those presented by BLS. These data deficiencies impair the ability of tribal, federal, state, and local policymakers to identify and respond effectively to needs in Native communities. They place tribes and Native non-profits at a competitive disadvantage when applying for federal grant funding.

Cost neutral improvements could be made to data collection by ensuring more effective coordination among existing federal research studies. For example, the Native American Lending Study at the Community Development Financial Institutions (CDFI) Fund could be more closely coordinated with the Native American Housing Study being conducted at the

Department of Housing and Urban Development (HUD). Savings gained from collaboration could be applied to the collection of additional primary data from Indian Country.

Specific Recommendations

- a) Direct the Census Bureau to test the effectiveness of higher volume, less regular ACS data collection (e.g. on a biannual basis, rather than monthly) with an eye to improving data quality (particularly to narrowing error boundaries on key socioeconomic data estimates)
- b) Identify existing federal studies and research dollars that could be applied to improving data quality in Indian Country
- c) Direct all federal agencies to review existing grant scoring criteria and offer tribes alternate assessment criteria to account for the diverse quality of data describing Native communities
- d) Ensure that tribal grant applications are reviewed by individuals with Indian Country knowledge and expertise
- e) Consult with tribes to ensure that performance measures reflect indicators that are relevant, collectable, and important to the community itself

VI. WAIVE MATCH REQUIREMENTS TO ACKNOWLEDGE THE UNIQUE CHALLENGES FACED BY NATIVE COMMUNITIES

Most tribes have extremely limited resources, philanthropy in rural and tribal communities is anemic at best, and much of the money available to tribes (and Native nonprofits) comes from grants and other federal sources. Because tribes lack the tax base available to other governments, imposing a match requirement on tribal governments has frequently resulted in tribes scrambling to find matching funds from limited resources and has often led to the underutilization of funds or precluded tribes from applying for them.

Specific Recommendations

- a) Eliminate match requirements for grants to tribal governments

ACCESS TO CAPITAL

While some tribes have succeeded in the area of business development and job creation, most tribal governments and individual tribal citizens have struggled to access the necessary capital to build strong, healthy economies within their sovereign territories. Expanded access to capital includes three different strategies that can be employed by the federal government: (1) greater access to traditional financial capital markets (investment capital, mortgage capital, etc.); (2) greater access to federal dollars that can provide seed money for project development; and, (3) promoting strategies that expand existing tribal businesses—“raising capital” by generating increased business revenues. The following is a list of suggestions for expanding access to capital in Indian Country that the current Administration could promote without legislation and with little to no cost.

FINANCING PROJECTS, FEDERAL INCENTIVES AND PROGRAMS

Finance is the foundation of business development. While there are a host of financing opportunities available for business development in general, sometimes, due to regulatory barriers or basic lack of information, tribes experience difficulty making use of these opportunities.

VII. NEW MARKETS TAX CREDIT

The New Markets Tax Credit (NMTC) is an increasingly important tool to catalyze private sector investments that create jobs and enhance access to capital for small businesses and community development, especially in distressed communities like Indian reservations. While the NMTC has limitations concerning what activities qualify, as well as what types of communities are targeted as beneficiaries, the IRS has issued guidance that identifies an Indian tribe as a targeted population,¹² meaning that tribal corporations are qualifying businesses for project financing through the use of NMTCs. However, because of the complicated nature of utilizing NMTCs, tribes have generally steered clear of them as a potential financing option. Beyond the IRS designation of Indian tribes as a targeted population, the government should further clarify that Section 17 Corporations, as well as other wholly owned tribal entities, are qualified active low-income community business (QALICB).

The complicated nature of utilizing NMTCs has meant they are underutilized to serve Native communities. Under the NMTC program, the actual credit is passed through a Community Development Entity (CDE) to potential investors. In return, QALICBs are able to seek funding directly from the CDE. Tribes need assistance in locating CDEs that are willing to contribute towards economic development projects in Indian Country. Clarification of Section 17 Corporations, and other wholly owned tribal entities, as QALICB would help tribes attract CDEs

¹² See IRS Publication: New Markets Tax Credit, Chapter 1: *Introduction to New Markets Tax Credit*, 1; Chapter 2: *Issues at the CDE Level*, 14, May 2010; Adopting the definition of “targeted population” within the American Job Creation Act of 2004, IRC §45D(e)(2).

willing to work with tribal communities. A structure that would allow three to five Native projects to partner to meet the current minimum threshold of \$10 million for smaller projects.

Specific Recommendations

- a) Issue clarification that Section 17 Corporations, Alaska Native Corporation, and other wholly owned tribal entities, are QALICBs
- b) Support education and outreach to ensure tribes have adequate information on how to use New Markets Tax Credits
- c) Provide support to identify Community Development Entities willing to work with tribal governments
- d) Provide a structure that would allow 3-5 small projects, \$10 million and under to jointly access NMTCs
- e) Include Native trust lands and Alaskan communities under 50,000 in population as eligible investment areas for New Markets Tax Credits

VIII. SECTION 1603 GRANTS

The Treasury's 1603 grant program provides cash grant incentives for renewable energy projects. However, this funding is not available to governments, including tribal governments. We recommend policy changes that would allow tribal governments, through Section 17 Corporations or wholly owned tribal entities, and ANCSA corporations to use Section 1603 grants.

Allowing tribal governments to use Section 1603 grants to finance energy projects will help alleviate the taxation issues which often stagnates energy development in Indian Country which, in turn, denies the nation access to a critical renewable energy source and undermining tribal economic development potential. Policies that encourage tribes to partner with outside entities have also been used to penalize that same partnership through dual taxation (as established in case law). By allowing tribes to use Section 1603 grants for energy development projects, tribes would be encouraged to take an ownership interest in these projects, expediting tribal energy projects and supporting their success.

Specific Recommendation

- a) Allow tribal Section 17 Corporations, as well as other wholly owned tribal entities, to participate in the Section 1603 grant program

IX. TRIBAL TAX-EXEMPT BONDS

Tax-exempt bond financing has remained an underused option for tribes because of three issues: (1) the "essential government function" threshold (required by Section 7871 (c)(1) of the Internal Revenue Code (IRC)) that tribal projects must meet to qualify for tax-exempt financing; (2) tribes' general lack of access to the investment market; and, (3) the lack of a strong tax base.

The Department of the Treasury (the Treasury) has indicated the need for a more streamlined approach in determining which tribal projects qualify for tax-exempt financing. A reasonable and straightforward approach would be to consider any activity undertaken by a Section 17 Tribal Corporation, or other wholly owned tribal entity, to meet the threshold necessary to qualify for tax-exempt financing. This approach makes sense because such tribal corporations are incorporated for the sole purpose of supporting the government functions of the tribe. While tribal governments may have more “corporate like” elements than their state and local counterparts (because of Indian Reorganization Act impositions, restrictions on their power to tax, and legislative requirements like those in the Indian Gaming Regulatory Act), tribes’ business engagement is really no different from state and local governments’ revenue-generating business engagement with state lotteries, alcohol sales, hunting and fishing licenses, and the like. Any meaningful economic development initiative pertaining to tribes must recognize these essential similarities between tribal governments, state governments, and local governments rather than penalize tribes for focusing on a mix of revenue-generating activities made necessary by adherence other federal laws.

In addressing the second and third concerns, we propose the Indian Finance Act and the IRC be amended to allow federal guarantees to back tribal bonds on the market. Traditionally, states and local governments secure their bonds through their tax base. This tax base consists of property tax, income tax, sales tax, and other taxing streams which generate enough revenue to use as collateral for bond security purposes. However, from a tribal perspective, high unemployment rates, the trust status in which their land is held, and inequities in current tax law make it impossible for tribes to secure their bonds using their tax base. Most tribes exercise a modest sales tax, a hotel tax, and gas taxes, but are constantly competing with neighboring states over the right to tax transactions within their own jurisdiction. Ensuring federal guarantees are available to back tribal bond offerings will allow tribes to use their bonding authority more effectively and frequently, creating jobs and business development on the reservation.

Currently, the Indian Financing Act prohibits federal guarantees as a source of security for tax-exempt bonds.¹³ Also, the IRC currently prevents tax-exempt treatment of any bond backed by federal guarantees.¹⁴ We recommend bonds guaranteed by the Department of the Interior for tribal tax-exempt bond issuances be added to the exceptions listed within that section. Taken together, these proposed amendments to the Indian Financing Act and the IRC would expand the tax-exempt financing realm beyond wealthy tribes to include tribes with moderate capital resources to leverage.

Tribal governments are not exempted from the registration and disclosure rules set forth in the Securities Act of 1933, whereas state and local governments are (Securities Act of 1933, 15 U.S.C. 77c (a)(2), (b)). Thus, tribes must either bear the registration costs or issue bonds into the private placement market, which generally provides inferior terms.

¹³ See Indian Financing Act, 25 U.S.C. §§ 1451

¹⁴ See Internal Revenue Code, 26 U.S.C. § 149 (b)

Specific Recommendations

- a) Eliminate the ‘Essential Government Function’ analysis currently used to qualify tribal projects for tax-exempt financing
- b) Deem projects undertaken by Section 17 Corporations and other wholly owned tribal entities as qualifying projects for the purpose of tax-exempt financing
- c) Institute federal guarantees to back tribal bonds on the market
- d) Exempt tribal governments from the registration and disclosure rules within the Security Act of 1933

TRIBAL ECONOMIC DEVELOPMENT BONDS

Section 1402 of the Recovery Act included a provision for the issuance of Tribal Economic Development Bonds (TED Bonds). The purpose of the TED Bond component of the Act was to boost economic development projects in Indian Country and to serve as a pilot project, whereby tribal governments would be able to issue tax-exempt bonds on a level of parity with state and local governments. The Secretary of the Treasury was to issue a study on TED Bonds no later than a year after enactment of the Recovery Act. More than two years later, a completed study on the TED Bonds has not been released. The Administration should ensure the study is completed and disseminated as soon as possible. If the findings from the study indicate that TED bonds were successful, the Administration should support the program’s transition out of the pilot phase and into full program implementation.

The TED Bond offering under the Recovery Act also needs several adjustments. Currently, the date by which an applicant must declare that they reasonably expect to issue a bond is approximately one year from the requested allocation. This timeframe needs to be expanded. Tribes are finding that, for a variety of reasons, it takes longer than a year to even get most projects shovel ready, let alone ready for a fair market bond offering. One of the reasons for this is the arduous BIA leasing process (see below). Next, the \$30 million cap on TED Bonds needs to be lifted to ensure tribes have access to better financing options. The initial rationale given for the \$30 million cap was that there were concerns about larger, wealthy tribes utilizing the majority of the TED Bond funding if no cap was instituted. However, there still remains a large unused amount of allocated funding. One of the reasons for this is that tribes do not want to obtain two debt sources for one development project. As it stands, if a tribe wants to finance a \$50 million hotel while utilizing TED Bonds, they must seek the additional \$20 million from another source. Tribes would like the opportunity to develop these types of projects within a single finance obligation. Finally, Alaska Native Claims Settlement Act (ANCSA) corporations seek eligibility to utilize TED bonds to finance projects to meet the myriad needs of Alaska Native communities.

The Treasury Department needs to reallocate the remaining funds for another bond offering with these suggestions in mind. The TED Bond component of the Recovery Act presents a great development opportunity for tribes and should be maximized under existing resources.

Specific Recommendations

- a) Expedite the completion of the Tribal Economic Development Bond study under the Recovery Act
- b) Expand the timeframe for current projects to issue a bond offering
- c) Adjust the general time requirements for bond offering under the TED bond program
- d) Reallocate unused funding for another bond offering and adjust cap limits to encompass larger-scale development projects
- e) Expand eligibility to include ANCSA corporations and issue clarification that Alaskan tribes and Alaska Native Corporations qualify to issue Tribal Economic Development Bonds

TAX-EXEMPT PRIVATE ACTIVITY BONDS

Currently, tribes may only issue tax-exempt private activity bonds (PABs) for tribal manufacturing facilities,¹⁵ while states may issue PABs for a wide variety of development projects (*e.g.*, airports, docks and wharves, mass commuting facilities, facilities for the local furnishing of electric energy or gas, sewage facilities, as well as a host of other qualifying purposes).¹⁶ Expanding the PAB authority of Indian tribes will help attract and promote economic development within the contiguous borders of reservations and territories. The latest report issued by the Advisory Committee on Tax Exempt and Government Entities (ACT) suggested expanding tribal PAB authority to extend to commercial projects which have economic (job creation), environmental, or other social value (*e.g.*, renewable energy projects; retail facilities; tourism and recreation facilities; land acquisition or reacquisition of historical homelands, etc.).¹⁷ We support this recommendation and suggest that any regulatory, and/or procedural processes, such as volume caps, be developed through consultation with tribal leaders.

Specific Recommendation

- a) Expand tribal tax-exempt private activity bond authority to include commercial projects with economic, environmental, or other social value

X. SURETY BONDING

Expansion of the BIA's guaranteed loan program will reduce the perceived risk associated with tribal sovereign immunity that is assumed by insurance companies. It will also increase access to infrastructure and other construction-related projects, and generate job opportunities and business growth during difficult economic times at no, or very limited, cost to the federal

¹⁵ See, IRC 26 U.S.C. § 7871 (c)(2), (c)(3).

¹⁶ See, IRC 26 U.S.C. §§ 141 (e), 142.

¹⁷ Advisory Committee on Tax Exempt and Government Entities (ACT) Report, *Indian Tribal Governments: Supplemental Report on the Implementation of Tribal Economic Development Bonds Under the American Recovery and Reinvestment Act of 2009*, 12, June 15, 2011.

government. The Administration should use existing authorities to provide surety bond guarantees.

We request that the Administration provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction. Surety bonding is one of the largest barriers to entry and growth in federal contracting construction in a highly competitive and capital intensive sector. Construction is also an area with a much higher probability of providing direct employment from tribal members and ANCSA tribal member shareholders. From a regulatory standpoint, this authorization could be made available, but limited by meeting certain goals such as tribal member employment opportunities or other metrics.

The surety requirement on construction contracts arises out of the Miller Act. There is only one provision in the statute -- 40 USCA § 3134 -- which addresses the waiver of Miller Act requirements for certain types of contracts. Under this provision, the Administration, through the Secretaries of the Army, the Navy, the Air Force and Transportation may waive Miller Act requirements for: (1) cost-type contracts that entail the construction, alteration or repair of any public building or public work of the Federal Government; or, (2) contracts that entail the manufacturing, producing, furnishing, constructing, altering, repairing, processing or assembling of vessels, aircraft, munitions, materiel, or supplies for the Army, Navy, Air Force or Coast Guard. There is one additional provision in the law that authorizes the Secretary of Transportation to grant the waivers for contracts for the construction, alteration, or repair of vessels when the contract is made under the provisions of two other laws.

As noted in the overarching recommendations above, the Administration can also utilize the federal government's convening power to bring together surety bonding companies to educate them on the potential offered by tribal projects. For a variety of reasons, tribal enterprises have not yet developed robust working relationships with the various surety bonding companies. Convening a meeting between surety bonding companies and tribal economic development enterprises would make a substantial contribution to establishing strong working relationships for future projects.

Specific Recommendations

- a) Support the expansion of the Bureau of Indian Affairs' guaranteed loan program to ensure access to surety bonding for eligible Indian-owned construction companies
- b) Provide authorized waivers for tribes and ANCSA corporations that would facilitate both entry and expansion into federal construction
- c) Organize and coordinate a meeting between surety bonding companies and tribal economic development enterprises
- d) Explore options that benefit contractors (rather than sureties), such as loan guarantees for operating capital

XI. TAX EXTENDERS

The accelerated depreciation and Indian employment tax credits are inconsistently available because they are renewed from year to year and are often not renewed in time or are made retroactive. This inconsistency makes them unreliable as investment vehicles to support multi-year, large-scale projects - which they are intended to incentivize.

The Administration should support long-term investment and production tax incentives that can be counted on by investors and used as an asset by tribes. Making these incentives permanent would not add additional cost on an annual basis. It would also attract non-Indian businesses into Indian Country instead of only benefiting those non-Indian businesses already doing business on the reservation.

Also, these federal incentives do little for tribally owned entities. The initial intent was to attract outside business to promote economic development and job creation in Indian Country. As a result, tribally owned businesses receive no incentives. This is discouraging because tribal businesses encourage job growth and economic development better within Indian Country than outside entities because they are investing in their own community. We recommend the accelerated depreciation and Indian employment tax credit be available to Section 17 Corporations, and other wholly owned tribal entities, in the form of tax credits which may be sold on the secondary market.

Specific Recommendation

- a) Support the permanent authorization of the Accelerated Depreciation & Indian Employment Tax Credits
- b) Allow Section 17 Corporations and other wholly owned tribal entities to make use of federal tax extenders through the establishment of tax credits which may be sold by the tribal entity on the secondary market

OVERCOMING ADMINISTRATIVE BARRIERS

The DOI oversees a wide variety of procedures pertaining to development on tribal lands. Many of these areas of oversight have direct effects on economic development and job creation. We recommend the Secretary of the Interior draft an agency-wide initiative to expedite any processes that affect economic development in Indian Country.

XII. LEASES, RESOURCE SALES & LAND INTO TRUST APPLICATIONS

There is an extraordinary current backlog of leases and land into trust applications that have real implications for tribal economies. Research has demonstrated that some BIA regional offices have effectively prioritized land transactions with economic implications.¹⁸ DOI must

¹⁸ NCAI Policy Research Center, (2009), *Exercising Sovereignty and Expanding Economic Opportunity Through Tribal Land Management*.

institutionalize these best practices at the national level. If expedited, the approval of development projects, leases, timber sales, agricultural leases, leases for right of way (e.g., to develop telecommunications infrastructure), and land into trust applications would quickly and effectively jumpstart tribal economies.

The GAO issued a report that “found no statutory or regulatory requirement that appraisals be used to establish lease values,”¹⁹ yet the appraisal process remains an integral component to lease approval under current BIA procedures. Short of eliminating the appraisal procedure altogether, we recommend that tribes be given the liberty to select their own land appraisers, providing those appraisers maintain the proper certification and/or licensing requirements. This adjustment in current procedures allows the tribe to partner with DOI to expedite the leasing process.

DOI has indicated that it is currently amending the 162 leasing regulations to state that activities pursuant to leased trust land are not subject to regulatory jurisdiction by outside entities, including taxation by states or counties. We recommend this language be drafted to include leased rights of way, which, under current case law, fall within the jurisdiction of the outside entity. This is important because tribes sometimes lease rights of way to non-Indian entities to develop telecommunications infrastructure, not knowing that this action currently cedes jurisdiction. The result is that tribes expose themselves to outside taxation which does not benefit their communities.

Specific Recommendations

- d) Prioritize the timely completion of procedures affecting economic development in Indian country by the Department of the Interior
- e) Amend the Bureau of Indian Affairs’ leasing procedures to allow tribes to select and use certified, licensed appraisers
- f) Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way

XIII. BARRIERS TO ENERGY DEVELOPMENT

In addition to the administrative issues outlined above, the \$6,500 fee—payable to the Bureau of Land Management for each application for a permit to drill on Indian lands—presents an inequitable disincentive to energy development on tribal lands. The scope of the disincentive is demonstrated by comparison with state fees. For example, in the state of Montana, the same fee ranges between \$25 and \$150. The fee was intended to target energy development on federal lands, not tribal trust lands, but unfortunately it has been interpreted in a manner which frustrates oil and gas development on Indian lands. The Administration should ask the BLM to retract BLM Instruction Memorandum No. 2008-043, which included Indian minerals within the scope of the \$6,500 fee. Also, BLM should be asked to issue a memorandum clarifying that Indian minerals are outside the scope of the energy development on federal lands targeted by the initial fee.

¹⁹ GAO: Report to the Subcommittee on Interior and Related Agencies, Committee on Appropriations, U.S. Senate, *Indian Programs - BIA Should Streamline Its Process for Estimating Land Rental Values*, 2, June 1999.

The Administration can also interpret the Energy Policy Act of 2005 to support and fund tribal capacity building; clarify criteria regarding fulfillment of renewable portfolio standards; and reduce the tribal cost share for energy projects under the 2005 Act back to levels in the Energy Policy Act of 1992. With respect to energy efficiency, revision of DOE Weatherization regulations and policies to include tribal programs would enable tribes to receive funding directly, without carrying the burden of proving that state programs do not serve their members.

Specific Recommendations

- a) Expedite agency decision-making processes which have a direct effect on tribal economic development opportunities, such as the approval of development projects, leases, timber sales, agricultural leases, leases for right of way (*e.g.*, to develop telecommunications infrastructure), and land into trust applications
- b) Amend the Bureau of Indian Affairs' leasing procedures to allow tribes to select and use certified, licensed appraisers
- c) Amend the 162 leasing regulations to clarify limits on state taxation power, including leased rights-of-way
- d) Eliminate the BLM's discriminatory permit application fee to drill on tribal trust land
- e) Amend or clarify regulations to enhance access to energy development opportunities

REGULATING TRIBAL FINANCE DEVELOPMENT

As tribal economies begin to grow, local financing needs for businesses, individuals, and tribes, increase and are exacerbated by the lack of financial institutions serving their communities. The Administration can help support the development of tribal financial institutions serving Indian Country and shape the services provided by outside financial institutions currently situated to help tribal members.

XIV. CDFI FUND – NATIVE INITIATIVES

Currently, there are more than 60 certified Native CDFIs located in 18 states serving Indian Country, Alaska, and Hawaii. The majority of them operate in low-income rural communities. CDFIs provide a wide range of financial products and services including microenterprise loans, small business loans, consumer loans, mortgage financing, financial education courses and credit repair. As such, Native CDFIs play a vital role in developing financial security within tribal communities, many of which have little to no access to local banking institutions. They also play a critical role in developing financial and entrepreneurial skills – a direct investment in the reservation workforce.

While the recent growth in certified Native CDFIs has been met with increased federal appropriations, the Native Initiatives do not have a dedicated line-item in the federal budget. The importance of the Native Initiatives should be underscored by an appropriation of at least 10 percent of the CDFI Fund budget. We encourage the Administration to support the inclusion of permanent language within the Riegle Community Development and Regulatory Improvement

Act, the CDFI's enabling act, to ensure the longevity and continued support for the Native Initiatives.

The emphasis of the CDFI Fund on non-government entities has meant that tribal governments have been kept at arm's length in most cases of CDFI development. On the other hand, some tribal governments have invested deeply in their CDFIs and seen significant success. Exploring regulatory or legislative options to explore certification of tribally-owned CDFIs may offer potential to engage tribal governments more fully in financial institution development to serve their communities.

In a recent nationwide survey of Native CDFIs, 90 percent of respondents indicated receiving federal funding in the last 10 years. When asked about their experiences and utilization of funding from six federal departments that commonly fund community development, 58 percent of the programs were used by less than 3 NCDFIs. 10 of the 31 listed federal programs were not used by any of the participating NCDFIs.²⁰ This demonstrates a clear need for better agency outreach and coordination to ensure the success of Native CDFIs.

Another explanation for low utilization of other federal funding sources is the onerous match requirements applied to many federal government programs. Given the proven success of Native CDFIs, regulations should be amended to eliminate match requirements completely or at least allow other federal awards (e.g. HUD, the Administration for Native Americans, and other agencies) to be used to meet the match requirement associated with CDFI Fund awards.

As with other economic success stories in Indian Country, effectively "telling the story" to ensure other tribes can benefit from lessons learned is invaluable. The Administration should direct the Native Initiative of the CDFI Fund to gather best practices in CDFIs serving Native and other rural and disadvantaged communities. These successes should be specifically shared with tribal governments in appropriate regional and national settings.

As noted above, mainstream financial institutions provide quite limited services to Native communities. The Administration should use its convening power to bring together financial institutions to explore strategies to increase access to private financing that can be utilized by Native CDFIs.

Native CDFIs fulfill an important role in developing tribal economies. However, the majority of Native CDFIs report that they have little to no contact with their representatives in Congress. The Administration should encourage Native CDFIs to communicate on a regular basis with their elected officials. When elected officials hear and see the good work Native CDFIs are doing for their communities they will be stronger advocates for Native CDFIs and help support budgets that include community development funding.

²⁰ Native CDFI Network, *The Utilization of Federal Funding Resources by Native CDFIs: Survey of Native CDFIs*, 4, January 2011.

Specific Recommendations

- a) Support inclusion of the Native initiatives in the authorizing statute for the CDFI Fund
- b) Promote agency outreach to Native CDFIs to connect them to potential funding opportunities
- c) Engage tribal leaders, Native CDFIs and other stakeholders to explore changes to allow tribes to own a CDFI
- d) Allow federal funds to be used as qualified match for awards to Native CDFIs
- e) Direct the Native Initiatives of the CDFI Fund to gather best practices and share with Native CDFIs and tribal governments
- f) Conduct outreach to financial institutions to educate them about the potential of investments in Native CDFIs
- g) Encourage meetings between Native CDFIs and their elected officials to discuss successes of NCDFI programs

XV. COMMUNITY REINVESTMENT ACT

Lack of data in Indian Country often hinders tribes' ability to support their initiatives. This is no different in the area of small businesses and financing for tribes. The Dodd-Frank Act requires that financial institutions collect and that the Consumer Financial Protection Bureau report information concerning credit applications made by small businesses and women- or minority-owned businesses. These data should be specifically analyzed to identify challenges to capital access for Native entrepreneurs. It would also be helpful for financial institutions to collect Census tract data on community development lending and investing; small business lending; and bank deposit and consumer lending. This emphasis on data that is specific to Indian Country will enable tribal communities to evaluate bank performance. This is important since a large body of research indicates that minorities received more high-cost and risky lending than was justified based on their creditworthiness.

Despite the significant alternative energy potential in Indian Country, there are numerous regulatory barriers to capitalizing on the renewable energy available on tribal lands. As noted above, despite these opportunities, tribes have been left out of federal efforts – and many private investments – to support domestic energy development. To ensure maximum benefit for the national, regional, and tribal economies, tribes can and must be provided with the same opportunities as states to become meaningful participants in the nation's clean energy future. As recommended by the Center for American Progress, the agencies should clarify that both investments in alternative energy facilities and energy efficiency enhancements can be considered for CRA credit. This regulatory clarification offers much promise for economic development and innovation in tribal communities.

The few Native communities that do have bank branches on their reservations, are afflicted by one of two challenges: (1) served by small or intermediate small banks whose CRA exams are not sufficiently robust; or (2) served by branches of large banks that can offset underinvestment in Native communities with lending activities elsewhere. It is critical for the agencies to both remove exemptions from data reporting and other tests for small banks (as was done, for example, in the Dodd-Frank Financial Reform Bill), and add a community development

component to the CRA exam for large banks. We need an exam methodology that incentivizes the investment in community infrastructure to serve remote, rural, and especially, reservation communities. The current structure of large bank exams allows a lack of community focused lending to be offset by home or business lending in other communities (often urban communities).

The agencies should also impose meaningful penalties on banks that fail to receive satisfactory grades on their CRA exams. One bank in South Dakota, located in the midst of the Lake Traverse Reservation of the Sisseton-Wahpeton Oyate, has received “needs to improve” as its grade on all five CRA exams since 1996 with no clear consequences for this ongoing non-compliance. It is also striking the degree to which Performance Evaluations (PEs) of banks that serve communities with large Native populations completely exclude analysis of bank service to tribal nations. Agencies must require that PEs that cover banks whose service areas include substantial tribal lands and/or Native populations assess the degree to which those institutions serve the Native communities in question.

Specific Recommendations

- a) Direct the Consumer Financial Protection Bureau to specifically analyze new data available under Dodd-Frank to assess small business lending in Indian Country
- b) Clarify that investments in alternative energy facilities and energy efficiency enhancements are eligible for CRA credits
- c) Add a specific community development test for large banks, and remove exemptions for small and intermediate small banks
- d) Impose meaningful consequences for non-compliance with CRA requirements
- e) Ensure bank Performance Evaluations include analysis of services provided to Native communities

ENCOURAGE ENTREPRENEURSHIP AMONG TRIBAL MEMBERS ON AND OFF THE RESERVATION

While tribal governments have made great strides in developing their economies with the financing tools available to them, individual tribal members still face the highest unemployment rate of any other minority group, and individual entrepreneurship remains largely underdeveloped among Indian peoples. Indian people interested in developing business ventures must be included within any policy promoting economic development in Indian Country.

XVI. SMALL BUSINESS ADMINISTRATION

Government contracting in Indian Country, through the tribal 8(a) program has been subject to more regulatory oversight from both the Small Business Administration and Department of Defense than most other contracting programs. The regulatory oversight combined with Congressional oversight has had a chilling effect on the very agencies that the Native communities rely on for contracting revenue. The tribal 8(a) program has already been altered in the Senate by placing a justification requirement on contracts exceeding \$20 million. This is a far

lower threshold than that applied to other sole source awards. Tribes use the 8(a) program to support the economic health of entire communities, and it has proven effective regardless of a tribe's location or size, making it a viable tool for all tribal governments. To support this effective incentive for tribal governments, the Administration should demonstrate their clear and unambiguous support for the program and provide certainty in the contracting marketplace.

We further recommend that the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries be expanded to all industries. This adjustment would encourage greater participation in the program at a time when the Section 811 has had a chilling effect on government contractors.

The Administration should support legislative language that elevates the Office of Native American Affairs (Office) within the Small Business Administration (SBA). With limited authority and resources, the Office promotes Native-owned 8(a) business development, HUBZone empowerment and other government contracting, entrepreneurial education, and capital access. It is necessary that the Office be brought into line with other administrators at the SBA and have the capacity to provide funding for Indian-focused technical services through tribal colleges and existing service providers.

Other non-tribe specific SBA opportunities, such as the SBA 7(a) program, offer potential funding opportunities. The 7(a) program provides financial help for businesses that handle exports to foreign countries, businesses that operate in rural areas, and for other specific purposes. The loans offered to businesses operating in rural areas are smaller, yet have a more streamlined, simplified application process. Similarly, the SBA Section 504 loans operate in conjunction with community-based non-profit organizations. More information needs to be accessible to individual tribal members interesting in starting their own business ventures.

Specific Recommendations

- a) Support the tribal small business 8(a) program
- b) Expand the price evaluation adjustments of up to 10 percent when bidding on federal contracts in certain industries to apply to all industries
- c) Elevate the Assistant Administrator of Native American Affairs at the Small Business Administration to Associate Administrator, with grant authority and a budget
- d) Encourage individual tribal entrepreneurs to seek finance opportunities outside the scope of Indian/tribal funding
- e) Expand investments in Native entrepreneurship training, including using entrepreneurial development funds for Native business centers and collaborations with Small Business Development Centers
- f) Require GSA procurement or preferences for goods and services that have been manufactured under supplier diversity mentor protégé or other agreements and have at least 51% diversity supplier content.
- g) Seek GSA building leases from qualified minority interests.

XVII. BUY INDIAN ACT

No single measure would do more to help resuscitate Indian Country employment, particularly in manufacturing, than an encompassing buy-Indian government procurement requirement. All infrastructure projects funded and guaranteed by the federal government and the proposed infrastructure bank should require purchases to be made in Indian Country rather than overseas, consistent with our international trade agreements. As well, to qualify as "Made in Indian Country," at least 75 percent of the content should have to be manufactured within tribal borders. To make that happen, the White House by Executive Order and Congress by legislation should require domestic content calculations to be effective and transparent. Domestic sourcing requirements for all government procurement programs (e.g., Buy Indian, the Recovery Act, the Energy Policy Act of 2005) and programs that support Indian Country (e.g., the 8(a) program, the HUBZone program) should also be reviewed to ensure that contracting agencies are obeying and implementing the requirements. The Defense Authorization Bill passed in December that requires the Pentagon to buy solar panels from U.S. manufacturers is a good model. In addition, Congress needs to enact an all-Indian successor to the 1933 Buy American Act.

No regulations to implement the Buy Indian Act have been issued in 75 years. Through a combination of regulation and expanded legislation, the Administration should support long-overdue regulations and changes to the Buy Indian Act which ensure that preference is given to on-reservation Native individuals and enterprises, and ANCSA corporations, in awarding contracts, and subsequent subcontracts, with the Department of the Interior, Indian Health Service and other agencies serving American Indian and Alaska Native populations. The Buy Indian Act should also be amended to require the recipient of a contract to provide training and employment preferences to Native people. Furthermore, consultation was held, March 2010, on draft regulations for the Buy Indian Act. Yet, to date, DOI has failed to release its final regulations.

Specific Recommendations

- a) Support and enhance the Buy Indian Act by establishing and enforcing regulations
- b) Explore ways to implement the Buy Indian Act for any federal program that receives funds for the benefit of Indians

XVIII. TRADE MISSIONS

Given the increased prevalence of cultural tourism and the sophistication of tribal enterprises, the Department of Commerce should include Indian Country representatives when assembling trade delegations from government and the private sector.

Specific Recommendation

- a) Conduct a meeting between senior Commerce officials, tribal leaders, and tribal enterprises to discuss potential tribal participation in U.S. trade missions

ALTERNATIVE ENERGY

A CASE STUDY DEMONSTRATING THE IMPACT OF REGULATORY CHANGES

Indian Country contains vast potential in the areas of solar and wind energy development. The Department of Energy (DOE) estimates that wind power from tribal lands could satisfy 32 percent of total U.S. electricity demand, and tribal solar resources could generate twice the total amount of energy needed to power the country. Yet at this time only one commercial scale renewable energy project operates in Indian Country. While other tools have been successful to develop tribal economies, renewable energy development both mirrors tribal values and beliefs and would meet a critical need to invest in a secure energy future for America.

Why is the process stalled?

Currently, there are few incentives for tribes to take an ownership interest in energy development projects. However, there are a number of energy development incentives, such as tax credits, available for non-tribal entities. This often compels partnerships with outside entities in order to access the necessary capital and infrastructure needed to develop a project.

Even when these partnerships are formed, the need for the Secretary of the Interior to approve leases on tribal trust land acts is a significant disincentive to energy development projects. Often times, lease approval may take longer than a year and by that time, the initial enthusiasm behind the established business partnership has all but disappeared.

The major barrier to allowing tribes to benefit from energy development projects is the state's ability to tax the non-Indian entity doing business on the reservation. This taxation problem has frustrated wind energy development projects in California and South Dakota, as well as general business development in a variety of other locations.

Solutions

Aside from legislation clarifying that states cannot tax activity occurring on leased tribal lands, tribal corporations need greater flexibility in financing options. Allowing tribal corporations to receive transferable tax credits and to utilize Section 1603 grants for energy development projects, as discussed above, would encourage tribal ownership over energy development projects, thereby alleviating the taxation issues which accompany partnerships with outside entities. Also as discussed above, the suggested changes to tax-exempt bonding authority and the clarification regarding tribal corporations' use of the New Markets Tax Credit, would allow tribes to develop their energy resources as well. Even clarifying regulations noting that alternative energy investments would qualify for Community Reinvestment Act credit would add to the possible capital to fund tribal projects.

This brief example demonstrates how simple regulatory fixes, outlined in the preceding recommendation, could encourage economic development within Indian Country, its basic principles can be applied to most economic ventures on tribal lands.

SKILLS AND JOB TRAINING

Any viable economic development initiative must include provisions for workforce development. This includes job training and skill development resources, entrepreneurship training, resume building, internship programs, referral services, as well as worker reentry programs for juvenile and adult offenders. For the most part, these programs are reliant on grant funding made available through legislation such as the Workforce Investment Act of 1988. There are myriad industries likely to experience increased growth in the decades to come including green jobs, health care, and information technology. Tribal communities offer immense potential in all these sectors and should be given opportunities to provide innovations in these fields through education and workforce development initiatives.

XIX. STREAMLINING FEDERAL EMPLOYMENT AND TRAINING PROGRAMS

Indian Country has deeply appreciated the Obama Administration's commitment to smarter government. In the current environment of constrained federal resources and the need to contribute to a robust economic recovery, streamlined federal programs are a necessity that senior Administration officials promote regularly as a promising practice for federal investments.

In that context, it is troubling that the Administration has continued past practice of offering tepid support – and in some cases presenting obstacles to the success of –the Indian Employment, Training, and Related Services Demonstration Act of 1992, otherwise known as PL 102-477. The program allows for the voluntary participation of tribes to combine formula funded federal grants and funds, related to employment and training, into a single budget with a single reporting system. The lead agency in this demonstration is the Department of the Interior, Office of Indian Energy and Economic Development and formula funded programs include those offered through the Bureau of Indian Affairs, Department of Labor, Department of Health and Human Services, and the Department of Education. There is no expiration date on this demonstration.

However, certain auditing provisions were changed under the March 2009 OMB A-133 Compliance Supplement issued by the Department of the Interior, which required tribes to deconsolidate their employment and training federal funds so that they could be audited individually. This went into effect for 2010 audits and cost several tribes large sums of money to recreate records for each individual program that was consolidated under PL 102-477. Once programs and associated funds are consolidated under PL 102-477 they lose their separate identities and are spent in accordance with the 'single budget' plan. Currently Section 430 of the House appropriations bill seeks to rescind the March 2009 Compliance Supplement to allow for tribes to annually audit, and be audited by the federal government, to track 477 funds.

Indian Country's interest in rescinding the OMB ruling is about a more robust accountability system proposed by the Native American Employment and Training Council and the community of Indian tribes and other Native grantees funded under Section 166 of the Workforce Investment Act (WIA) strongly supports full accountability for program results in the Native WIA programs. The council supports a program accountability system which incorporates each of the following

principles: (1) it is consistent with the purposes of Section 166 WIA programs (for PL102-477 programs as well); (2) it is consistent with the nature of Native WIA programs as Native programs and takes Native circumstances into account; (3) it strengthens services for Native people; (4) it supports the needs of Native youth; (5) it contributes to the creation of jobs for Native people and the economic development of Native communities; (6) it protects the privacy of information on Native program participants and the confidentiality of the case management process; (7) it can be implemented without increasing administrative costs; and (8) it is developed in consultation with the Native American Employment and Training Council and the leaders of Indian tribes and Native communities. Unfortunately, the reporting systems proposed, mandated, or interpreted for these workforce training programs by OMB and the Labor Department's Employment and Training Administration meet none of these eight requirements.

Specific Recommendations

- a) Fully support Public Law 102-477 to allow tribes to maximize the impact of federal job and skill development funding
- b) Rescind the March 2009 OMB A-133 Compliance Supplement
- c) Work with tribal leaders and the Native American Employment and Training Council to develop a program accountability system that meets the needs of Native communities

XX. TRIBAL COLLEGES

Higher education is one of the main drivers of economic development in the United States, and particularly for American Indian communities. Higher levels of education correlate with higher earnings, lower unemployment rates, and lower poverty rates. It is estimated that by 2018 only 10 percent of jobs will be accessible to workers without a high school diploma. Furthermore it is estimated that by that same time frame only 28 percent of jobs will be available to those with just a high school diploma. In 2005, a typical year-round worker in the United States with a bachelor's degree earned 62 percent more than someone with a high school diploma.²¹ A college degree has a positive ripple effect on the well-being and economic strength of tribal communities and society as a whole.

Tribal Colleges and Universities (TCUs) provide a unique opportunity for workforce development and training within Indian country and are essential education and job training institutions in many rural communities. More than 37 TCUs provide training in two and four year accredited degree programs on more than 75 campuses in 15 states, including on the reservations of the 10 largest tribal nations in the United States, and a few are now providing advanced degrees in several disciplines. The TCUs serve more than 30,000 students from well more than 250 federally recognized Indian tribes. TCUs vary in enrollment (size), focus (sciences, workforce development/training, liberal arts, etc.), location (woodlands, desert, frozen tundra, rural reservation, urban), and student population (predominantly American Indian).

²¹ Baum, S. & Jennifer M. (2007). *Education Pays: The Benefits of Higher Education for Individuals and Society*. Washington, DC : College Board.

However, tribal identity is the core of every TCU, and they all share the mission of tribal self-determination and service to their respective communities.

TCUs are on the forefront of job training efforts to capitalize on Indian Country's potential in policy areas including alternative energy and green jobs, and the health care industry. According to the American Indian Higher Education Consortium some of the most popular tribal college programs are in high demand fields including business and vocational/career programs.²² The programs of the TCUs are often oriented to the economic needs of the specific tribal nations they serve, but they remain an underutilized and often underfunded resource for workforce training needs of the economies of the tribal nations. Economic specific programs range from things like veterinary science to construction technology and environmental sciences. Many of the TCUs also help protect and advance the tribal culture and language of the specific tribe they serve.

Research is becoming a focus for many TCUs with partnerships including the Department of the Interior, Department of Agriculture, Department of Housing and Urban Development, the National Science Foundation, National Aeronautics and Space Administration, and universities nationwide. These partnerships support research and education programs that focus on issues such as climate change, sustainable agriculture, water quality, wildlife population dynamics, and diabetes prevention. TCU faculty are engaged in research in many areas including: hydrology, molecular cell biology, archaeology, entomology, community health, environmental science, aerospace engineering, and advanced manufacturing processes.

UNITED TRIBES TECHNICAL COLLEGE

United Tribes Technical College (UTTC) is one of the most unique tribal colleges. Operated by the five tribal nations with a presence in North Dakota, it is one of the oldest TCUs, founded in 1968 as United Tribes of North Dakota Development Corporation. The vision of the founding tribal leaders was that UTTC could become a force for economic development among the tribal nations in North Dakota. One of its many early accomplishments was the placement of tribal planners on the reservations in North Dakota, among the first tribal planners in the United States.

UTTC offers two year degree programs and one year certificates in more than 17 areas, as well as four year degree granting programs in elementary education, criminal justice and business administration, as well as a number of on-line courses and degree programs. UTTC serves more than 1,000 students from as many as 75 tribal nations at any one time on its campus near Bismarck, North Dakota.

In addition to this academic mission, UTTC has also remained true to the vision of its founders, with several intertribal programs housed on its campus. These include a Minority Business Development Agency serving North and South Dakota, a Tribal Transportation Planning Center, and the offices of the North Dakota Association of Tribal Colleges. UTTC is further developing a Leadership Institute and has been in the recent past a University Center for economic development under a grant from the Economic Development Administration. UTTC's personnel

²² American Indian Higher Education Consortium. (2009). *AIHEC-AIMS Fact Book 2007: Tribal Colleges and Universities Report*. Alexandria: American Indian Higher Education Consortium.

have the skills to provide a variety of economic development technical assistance, especially including technical training for the creation of economic development infrastructure and tribal planning capabilities.

UTTC is also seeking to become a regional center for law enforcement training, both advanced and basic training. Safety in Indian Country is extremely critical for the maintenance of stable tribal economies, and, together with AIHEC, UTTC has a Memorandum of Understanding with the Department of the Interior to pursue this objective. At present, there is only one Indian Police Academy in the United States, and its capacity is limited, yet the need exists for several thousand more law enforcement correctional officers in Indian country.

The MBDA center serves as a minority small business hub for the region. With limited funds and personnel, the MBDA center assists individual and Tribal clients to develop business plans and assist in lining up financing for such business. This center, or its equivalent, has been part of UTTC's campus since 1971, and has helped create more than 10,000 jobs in Indian country in the past 40 years. Specific comments from the UTTC MBDA center regarding how to improve these resources so vitally needed for entrepreneurship development are located elsewhere in this Briefing Paper.

Specific Recommendations

- a) Ensure tribal colleges are included in existing and proposed programs to develop America's workforce through community colleges
- b) Reissue the tribal college specific Executive Order (EO 13270), either separately or as a part of an overall Executive Order on Indian education, to require all agencies to work with tribal colleges and provide an implementation plan for such cooperation
- c) Advocate for increased funding for TCUs and assist TCUs to leverage other outside resources in the private sector
- d) Support TCUs in obtaining more research grants that can assist the tribal nations that they serve
- e) Include tribal colleges in efforts to develop jobs in America, looking to TCUs as training centers for workforce development in Indian Country and rural America
- f) Continue support for UTTC to develop as a regional training center for law enforcement correctional officers
- g) Restore UTTC as a University Center for Economic Development to utilize the job creation capacity of TCUs

XXI. EMERGING EMPLOYMENT OPPORTUNITIES

When inequities are enacted in federal law to exclude tribal government access to funding, it has a requisite impact on tribal citizens. The Administration should rectify this by interpreting the Green Jobs Title of the Energy Independence and Security Act (P.L. 110-140) to include tribal governments, businesses, and veterans associations so that they can access programs such as Pathways Out of Poverty.

Also, related to the previous section, emerging jobs, such as e-commerce and telecommunications projects, are currently not viable options for tribal members in remote locations of the reservation. We recommend youth exchange programs be developed with a focus on building skills for success in a technological world. The leaders of the future in Indian Country must be computer savvy, and possess the ability to communicate well in diverse locations. Instituting youth exchange programs which seek to develop these skills will improve the leadership of tomorrow's Indian tribes.

Specific Recommendations

- a) Interpret the Green Jobs Title of the Energy Independence and Security Act to include tribal governments, businesses, and veterans associations so that they can access programs such as Pathways Out of Poverty
- b) Work in conjunction with tribal charter schools, BIE, and non-Indian schools with technology-specific curriculums to develop youth exchange programs

XXII. YOUTHBUILD

Transferred from the Department of Housing and Urban Development (HUD) to the Department of Labor (DOL) by President George W. Bush on September 22, 2006, the YouthBuild Program is administered by the Employment and Training Administration. This program assists disadvantaged, low-income youth ages 16-24 in obtaining education and work skills to be competitive candidates in the job market. Youth participate in building affordable housing for homeless and low income individuals while attending classes to obtain their High School Diploma or GED. When the program was transferred to DOL, the 10 percent set-aside for rural and tribal programs was eliminated.

The YouthBuild program recruits youth that have been adjudicated, aging out of foster care, high school drop-outs, and other at risk populations. In 2010 4,252 youth participated in the program and had a completion rate of 78 percent, and of those that completed the program 60 percent were placed in jobs or further education. It was also reported in 2010 that of the 4,252 participants in the YouthBuild program 4 percent were Native American.

Specific Recommendations

- a) Encourage appropriators to restore the rural and tribal set-aside, with a dedicated set-aside for tribal programs
- b) Work with DOL to utilize regulatory means to ensure access for tribal grantees
- c) Establish partnerships between federal agencies, community colleges, tribal colleges and universities, and technical/vocational colleges to increase access to higher education and foster the creation of bridge programs
- d) Relax Department of Education regulations to allow YouthBuild to compete for innovation funds

XXIII. CURRENT WORKFORCE DEVELOPMENT PROGRAMS AND SERVICES

Often times, tribal members are unaware of the workforce development opportunities available. As a starting point, the Administration can provide outreach to tribal governments and urban Indian centers about the various federal programs that tribal members are eligible to participate in. Where tribes are eligible to access mainstream funding sources, federal agencies should be encouraged to conduct extensive and targeted outreach to tribes and Native non-profits. Workforce development opportunities currently available to Indians on and off the reservation include:

Bureau of Indian Affairs - Division of Workforce Development

Operating under the Office of Indian Energy and Economic Development (IEED), the Division of Workforce Development manages a wide variety of job placement and training activities. The IEED works in conjunction with the Departments of Labor and Health and Human Services, and other organizations, to coordinate programs for approximately 50,000 individuals per year. Examples of programs include the National Indian Ironworker Training Program, as well as highway construction training and employment programs.

Department of Labor - Indian and Native American Program

Operating under Section 166 of the Workforce Investment Act of 1998, the Indian and Native American Program (INAP) seeks to make Native Americans more competitive in the workforce, while, in general supporting the economic development of Indian, Alaska Native, and Native Hawaiian communities. In general, Section 166 grants are awarded to American Indian and Alaska Native communities to be used in the development of community-specific employment programs, such as developing job readiness, resume building, and referral services. INAP also partners with the National Indian and Native American Employment and Training Association to host a national employment and training conference.

Department of Labor - Youth Services

The Department of Labor's Youth Services Program (YSP) is a formula-funded youth program intended to serve eligible low-income youth, ages 14-21, who face barriers to employment. While this program is not American Indian/Alaska Native specific, it does serve urban areas with large populations of tribal members. Services available under the YSP include tutoring, alternative secondary school offerings, summer employment opportunities linked to academic and occupational learning, paid and unpaid work experiences, occupational skills training, as well as mentoring, guidance and counseling services.

Department of the Interior – Youth in the Great Outdoors Program

DOI's Youth in the Great Outdoors Program employs, educates and engages young people in exploring, connecting with and preserving America's natural and cultural heritage. The program places an emphasis on developing the stewardship roles of participants in caring for the environment. As an example, it focuses on the new energy frontier, tackling climate change issues, empowering Native communities, building trails, enhancing wildlife habitat, and restoring cultural and historic landmarks. Each of these focuses meets a current need in tribal communities.

Specific Recommendations

- a) Inventory existing workforce development programs across agencies and conduct coordinated interagency outreach to promote funding opportunities
- b) Encourage agencies to conduct tribal specific outreach where tribes and Native non-profits are eligible to access funding

ACCESS TO BROADBAND

The United Nations recently announced that access to the internet is a basic human right because it facilitates civic engagement, assists economic development initiatives, promotes long distance learning and telemedicine, and is an invaluable source of information. However, tribal communities continue to experience low access and connectivity rates for basic broadband and analog telephone services. Where competitive forces have facilitated the build out and deployment of broadband internet, telephone and radio access, tribal communities have experienced numerous bureaucratic and financial barriers to access. Analog telephone penetration rates on tribal lands are at 67.9 percent, while 98 percent of the nation has access to telephone service. The disparity on tribal lands pertaining to internet access is even higher, estimated at less than 10 percent penetration while 95 percent of Americans live in housing units with access to fixed broadband infrastructure. The federal government through its trust responsibility, and congressional passage of the 1934 Communications Act and subsequent amendments through the 1996 Telecommunications Act, has a fiduciary responsibility to provide avenues of access for connectivity and universal service in tribal communities. The establishment of a reliable telecommunications infrastructure is essential to the operation of tribal government, health care, education, economic development, and public safety.

XXIV. RURAL DEVELOPMENT LOAN PROGRAM

Approximately 500 rural telecommunications companies receive loans from USDA's Rural Development, Rural Utilities Service (RUS). Out of those 500, eight are tribally owned/operated telecommunications authorities operating on tribal lands and have acquired eligible telecommunications carrier (ETC) designation from the Federal Communications Commission (FCC). These loans are for the purposes of providing funding for facilities and equipment to upgrade, maintain, and expand deployment of broadband services. However, they are unavailable to tribes pursuing start up initiatives for their own telecommunications companies because the USDA is unable to provide loans to entities that would provide competition with rural carriers receiving similar loans from the USDA. This presents an obstacle to tribes desiring to develop their own telecommunications abilities and provide these vital services to their membership. While the USDA loan program has benefited certain tribes that have established their own telecommunications, it has not been inclusive of tribes seeking these funds if they will provide competition to nearby rural telecommunications companies.

Specific Recommendations

- a) Reform USDA lending policies to ensure tribal eligibility for loans even when they provide competition to rural telecommunications companies/cooperatives
- b) Redefine service areas to accommodate tribal ETC designations if a rural carrier holds spectrum over tribal lands
- c) Identify and communicate programs that offer tribes competitive financing options (e.g. low interest rates and extended repayment terms or the waiver of non-duplication restrictions, matching fund requirements, or credit support requirements from any loan or grant administered by federal agencies)

- d) Create a tribal position, filled by an American Indian or Alaska Native, within the USDA RUS to encourage further collaborative efforts with tribes

XXV. UPGRADE E-911 ABILITIES

Full access to emergency services is an essential component of a business-friendly reservation environment. Unfortunately many tribal communities across the nation lack analog and/or digital access to E-911 services. Broadband services are an essential life saving utility that should provide tribal communities with security and assurances that emergency services are available and adequately attainable through E-911.

Another critical public safety feature related to E-911 is the Automatic Location Identification data base. ALI failure occurs when a phone number is not located in the database and the Public Safety Answering Point (PSAP) operator must ask the caller of their location and redirect them to an appropriate PSAP that services that area. Since many non-tribal members are unaware of the areas/names of tribal lands this leads to prolonged EMS and law enforcement response times that can prove very serious.

Ensuring tribes are a part of this critical piece of 21st century infrastructure requires efforts by the Congress and Administration to ensure tribes are included in HR 2629 “Next Generation 9-1-1 Advancement Act of 2011,” which contains currently no provisions pertaining to tribes. The goal of this proposed legislation is to foster migration from analog, voice-centric 9-1-1 to a next generation IP-based model. However, many tribes across the nation currently do not have access to even basic analog telephone services and therefore this gap to access for emergency services on tribal lands will increase if tribal consideration is not given.

Specific Recommendations

- a) Provide for SafetyNet E-911 service for tribal communities since many tribal lands reside in rural areas thereby increasing EMS and law enforcement response times
- b) Ensure that wireline telephone carriers have an updated ALI database that is inclusive of tribal lands
- c) Ensure that wireless mobile telephone carriers fully implement and continually update E-911 Phase 2 on tribal lands ensuring that this service is accurate within 300 meters when determining the location of a caller and subsequently routing them to an appropriate PSAP
- d) Provide and support amendments to be inclusive of tribal governments and lands in HR 2629 “Next Generation 9-1-1 Advancement Act of 2011”

XXVI. COMMUNICATIONS INFRASTRUCTURE

There are a number of existing options that tribes could utilize to acquire funding/financing for tribal telecommunications infrastructure deployment. For instance, New Markets Tax Credits (NMTC) could be used to subsidize the costs of infrastructure deployment in tribal communities; the Office of Indian Energy and Economic Development offers funding for feasibility studies and also offers the Loan Guarantee program; and the USDA’s Rural Utilities Service provides

loans to tribes to cover start up, maintenance, and expansion of facilities and equipment. Community Development Entities (CDE) have utilized NMTCs for ‘gap financing’ on myriad projects to alleviate a portion of costs. As noted above, the NMTC Program offers tax incentives to attract private sector investment in businesses located in economically distressed communities. Although NMTCs are targeted towards economically distressed communities, tribes may not have the financial capabilities to apply for these incentives. The Office of Indian Energy and Economic Development (IEED) could play a crucial role in attracting industries and businesses towards tribal communities and incentivize NMTCs. IEED could also spur additional economic development initiatives in Indian Country through its Divisions of Economic Development, Capital Investment, and Workforce Development. Recently IEEDs Native American Business Development Institute (NABDI) has also announced that it was soliciting proposals from federally recognized Indian tribes for technical assistance training. This funding was aimed at conducting feasibility studies on tribal lands for the purposes of economic development initiatives. Tax exempt bond financing (outlined in more detail in the previous section) offer another potential source of funding for broadband deployment. The broad array of funding possibilities underscores the need for coordinated inter-agency outreach to engage and educate tribes about the various financing options to develop broadband infrastructure. This could be done through the clearinghouse recommendation outlined under Section III of the “Overarching Recommendations.”

Developing tribal communications infrastructure will also require a policy environment that acknowledges the unique needs of tribal communities. Similar to local ownership and investment that is supported in rural communities, a tribal-centric model would allow tribes to improve access, affordability, deployment, and provide tribes with increased data collection on access to broadband services or lack thereof. Careful consideration must be given to tribal communities and the socio-economic situations that exist on reservations. Federal criteria on applications should be reformed to prioritize tribal need for vital services offered by broadband access, such as: educational dropout rates, unemployment and poverty rates, and access to emergency medical services. The E-Rate model was created to subsidize communications services to rural and low-income areas. The current definition of ‘library’ allows for E-Rate funding if said library is also eligible for funding from a state library administrative agency, which tribes are not eligible for. Consideration of the unique needs of tribes compel several changes to the E-Rate model to extend the build out of tribal communications infrastructure.

Specific Recommendations

- a) Establish inter-agency collaboration between the Department of Treasury, Department of Agriculture, and the Department of the Interior with tribes to develop additional financing options collectively, and educate tribes of available financing
- b) Ensure funding mechanisms allow tribes access to technical assistance to assess infrastructure and appropriate technological and service solutions for deployment and maintenance of broadband services on tribal lands
- c) Ensure adequate access to tax exempt bond financing and that broadband deployment meets the ‘essential government function’
- d) Support a ‘tribal-centric’ build out model for communications infrastructure
- e) Use the E-Rate model for tribal communities to prioritize the need for communications networks and for managing costs and distribution logistics.

- f) Continue waivers for the E-Rate model to provide access to the general public in tribal communities beyond the ‘school hours’ designation
- g) Urge the FCC to alter the definition of ‘library’ to allow eligibility for tribal libraries to receive E-Rate support

XXVII. UNIVERSAL SERVICE FUND (USF)

The USF was created by the FCC in response to congressionally mandated ‘universal service’ goals provided in the Telecommunications Act of 1996. The USF draws its funding from all telecommunications carriers that provide service internationally and between the states. Each carrier must pay dues for the USF to the Universal Service Administrative Company (USAC), an independent, not-for-profit company that oversees and allocates USF funds to support the High Cost, Low Income, Rural Health Care, and Schools and Libraries programs.

Although the USF has provided much needed funding to tribal communities for broadband infrastructure deployment and a myriad of beneficial services, there are a multitude of reforms that could be utilized to assist tribes further along the path of self-determination.

The creation of a Tribal Mobility Fund would provide targeted funds to tribal lands for the expansion of mobile 3G coverage. Allocation of funds from the Mobility Fund to the Tribal Mobility Fund would provide adequate time for the FCC to coordinate with tribes and seek tribal leader input on how to best utilize the funds to bring mobile services to tribal lands. Tribes should also be given the opportunity to choose either 3G or 4G coverage based upon their own community’s needs.

The eight tribal telecommunications companies that have attained eligible telecommunications carrier (ETC) designation have increased broadband connectivity by 300-900 percent. As such, tribal ETC designations should not be halted or barred if a rural telecommunications company operates a service area that extends within tribal reservation boundaries. Service areas must be redefined to accommodate a tribal ETC designation. Tribes should also be given first right of refusal to access spectrum over their own lands.

Tribal access to the Connect America Fund (CAF) offers significant potential. The CAF will provide funding for access to a network that will be capable of providing high-quality voice-grade service and broadband. As the nation begins its transition from analog to digital services there needs to be an assurance that tribes will have increased access to develop and enhance digital services within their respective communities.

Specific Recommendations

- a) Create a ‘Native Nations Broadband Fund’ within the USF to provide targeted funding for broadband deployment in Indian Country. This fund would combine Universal Service support and federal grant resourcing programs
- b) Support the creation of a separate tribal account within the Mobility Fund
- c) Create a ‘Tribal Seat’ on the Joint Federal-State USF Board to ensure a voice for Indian Country to receive these vital communications services

- d) Include broadband internet service access and mobility services in the list of services provided by the USF
- e) Allocate and reserve spectrum for tribal communities and make existing spectrum over tribal lands available for public interest needs
- f) Develop a comprehensive Native Spectrum Policy to enhance tribal access to spectrum for public needs and the ability to acquire and retain licenses to said spectrum
- g) Urge the FCC to designate ‘unserved areas’ and ‘unserved broadband areas’ as those areas that are 15% below the nationwide average of telecommunications service
- h) Increase support for tribal telecommunications corporations to attain ETC designation in order to provide service to tribal members
- i) Include provisions for tribal communities to receive funding from the CAF, while ensuring the continuation of vital analog services such as Lifeline, Link-Up, and the High Cost programs

XXVIII. SPECTRUM DASHBOARD DATA

Current Spectrum Dashboard contains detailed information, mapping, and research capabilities for areas where broadband service is either already available or could potentially be provided, yet Indian Country is poorly represented in this data.

Specific Recommendation

- a) Advocate on behalf of tribes for an accurate assessment of broadband capabilities on tribal lands to be included in the Spectrum Dashboard data
- b) Grant tribes access to the Dashboard for planning purposes to develop their own telecommunications capabilities

XXIX. REVERSE AUCTIONS OF SPECTRUM

Reverse auctions were established by the FCC to enable spectrum allocation and funding to a telecommunications carrier that requests the least amount of funding for infrastructure deployment in a given area. This system thereby benefits large companies with substantial access to capital and the financial means to fund broadband infrastructure deployment in rural and tribal communities. Therefore, the reverse auction system effectively excludes tribal participation in the bidding process due to their economic resources. Continued use of the reverse auction system for tribal and rural communities is already opposed by the Joint Federal-State USF Board and it will only prevent access to spectrum and licensing ownership options.

In many senses, spectrum is a natural resource for the 21st century. Therefore, tribes should have the ability and right to acquire, and retain licenses to spectrum over tribal lands. Tribes should also have the right to lease existing spectrum over tribal lands to telecommunications carriers. If the FCC continues with reverse auctions of spectrum over tribal lands then tribes should receive a percentage of revenues generated from said auctions when they involve spectrum over tribal lands. Companies that want to acquire spectrum over tribal lands should approach tribes and the federal government for consultation efforts.

Specific Recommendations

- a) Urge the FCC to change its stance on reverse auctions for tribal and rural communities and instead provide tribal priority to available spectrum and offer it at discounted or reserved prices
- b) Ensure adequate consultation is undertaken and tribes are compensated in the case that reverse auctions continue

XXX. TRIBAL LANDS BIDDING CREDIT (TLBC)

The TLBC was introduced by the FCC to provide an incentive for telecommunications companies to expand broadband services to tribal lands that have a penetration rate equal to or lower than 85 percent. These credits were awarded to winning bidders and were meant to offset infrastructure deployment costs but have failed to expand broadband services to tribal communities. Some of the shortfalls surrounding the TLBC program include tribal communities unable to acquire spectrum licenses, lack of increased coverage to unserved and underserved tribal populations and geographic areas, commercial providers unable/unwilling to include tribal provisions for service, and limited support for tribal public safety efforts including the enhancement of wireless PSAPs in tribal communities.

The Administration should enforce the program and ensure recipients of these credits actually serve the designated communities or reacquire the spectrum allocated to those entities.

Specific Recommendations

- a) Enforce the TLBC program and ensure that recipients of these credits build out service in tribal communities
- b) Intervene when providers have experienced obstacles presented by state or local governments
- c) Reacquire spectrum allocated to entities who fail to serve their designated tribal lands and give tribes first priority to obtain these licenses at reserve or discounted prices

XXXI. PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM (PTFP)

In tribal communities, radio is the most effective medium for informing a community of weather conditions, traffic issues, evacuations, and other emergency conditions. Tribal and rural radio stations provide essential life saving information, which is essential in lands that have limited 911 services due to lack of access to telephone or broadband.

The PTFP was administered by the National Telecommunications and Information Administration (NTIA) within the Department of Commerce and provided funding for radio and television broadcast stations. Unfortunately, during the debate surrounding the elimination of the PTFP, there was a misconception by the Administration and Congress that it encouraged duplicative spending and that the Corporation for Public Broadcasting (CPB) was ably equipped to assume the duties of this program. On the contrary, the PTFP would cover costs associated with public radio equipment, construction of new stations expanding to unserved and

underserved communities, and maintained an emergency fund for the replacement of radio equipment due to natural disasters and terrorist attacks. The CPB provides no funding for any of the aforementioned needs. It only provides funds to radio and television stations that are currently operable and have reached certain levels of staffing, financial support, and dedicated audience. By statute the CPB is required to spend a majority of its funds to assist broadcast stations with producing high quality public programming, which is not inclusive of infrastructure build out for new stations. While the CPB currently provides funding to current operable tribal radio stations, it would not be able to provide financial assistance to newly designated tribal radio stations. The PTFP also covered all costs associated with planning and provided matching funds that would cover 50-75 percent of a new station's cost.

In 2007 the FCC opened filing for noncommercial educational radio systems for the first time in seven years. The FCC granted 38 noncommercial FM radio construction permits to tribal groups. These permits had a three year deadline to complete construction of studios and transmitters – many of which are nearing expiration. However, many tribes relied on the PTFP program to develop their radio stations and since its dissolution have been seeking alternative funding sources and requesting extensions for their tribal radio construction permits.

Specific Recommendations

- a) Extend tribal radio construction permits nearing the expiration deadline
- b) Review and consider reauthorization of the Public Telecommunications Facilities Program to advance tribal and rural communities access to public radio and television